

REMARKS/ARGUMENTS

Applicant filed a Response to the Office Action dated March 9, 2007 on July 9, 2007. On July 25, 2007, Applicant, accompanied by her counsel, had a telephone interview with Examiner Webb, to exchange their view of the present application and the rejections. Subsequent to the telephone interview, Applicant filed a Supplemental Amendment on August 13, 2007 to further amend her claims. As a result of these amendments, claims 3-5, 13, 15-16, 18-20, and 22-30 are pending.

In the Office Action mailed October 29, 2007, the Examiner indicated that the Supplemental Amendment filed on August 13, 2007 is not fully responsive because the response fails to state on the record how the newly amended claims are patentable over the previously applied references.

Applicant respectfully submits that the amendments of the claims have obviated the rejections for the reasons set forth below:

Claim Rejections -- 35 U.S.C. § 102

Claims 1, 4 and 6 are rejected under 35 U.S.C. § 102(e) as being anticipated by Yoo.

Yoo teaches an elastic textile belt for acupressure for securing the belt around the waist of a user.

Claims 1 and 6 have been canceled. Claim 4 has been amended to depend from claim 13 which recites an acupressure device comprising a cap and a plurality of metal members attached to the inner side of the cap. Because Yoo fails to teach or suggest a cap to be used as an acupressure device, Applicant's claimed invention is not anticipated by Yoo.

Claim Rejection -- 35 U.S.C. § 103(a)

Claims 3, 5, 13, 14, 16, 17 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoo in view of Kramer.

The Examiner alleges that Yoo discloses the invention as claimed with the exception of the specific type of metal and the projections being placed on both the Baihui point and another acupressure point. Kramer discloses the type of metal on acupressure projections and also discloses that it was known to attach multiple acupressure projections on a single backing substrate in order to press against multiple acupressure points in the same basic location. The examiner also contends that the spacing between the projections of Yoo would inherently allow one point to be placed on the Baihui point and one of the other projections on one of the other claimed acupressure points, based on their relative locations on the human body.

In response to these rejections, Applicant has amended independent claims 13, 16 and 19 to recite an acupressure device comprising a cap and a plurality of metal members attached to the inner side of the cap. Claims 3 and 5 have been amended to depend from claim 13.

To establish a *prima facie* case of obviousness, the Examiner is responsible for showing that the prior art reference (or references when combined) teaches or suggests all of the claim limitations. *See MPEP* § 2143.

Because neither Yoo nor Kramer teaches that the acupressure device is a cap containing metal members in the inner side of the cap. Claims 3, 5, 13, 16, and 19 are not obvious over Yoo in view of Kramer. Claims 14 and 17 have been canceled. Rejection to these claims are now moot.

Claims 1, 3-6, 13, 14, 16, 17 and 19 are rejected under 35 U.S.C. § 103(a) over Kramer in view of Yoo.

The Examiner alleges that "Kramer discloses an elastic backing and metallic nubbins for placing on acupressure points on different locations of the body, including the scalp. The backing is formed into the appropriate shape depending on the location of the body it is to be placed. See Paragraph 10. Also disclosed is the use of such a device to treat insomnia." *See* Office Action of March 9, 2007 at 5.

The Examiner further avers that "Yoo discloses a strap with metal nubs thereon to perform acupressure on points closely located together."

The Examiner is wrong about the teachings in Kramer. The acupressure device taught by Kramer, as shown in the drawings and the disclosure throughout the entire application, is a base sheet used in either ears or palms, not on the scalp per se. Particularly, the only excerpt in Kramer which describes the treatment of insomnia is in connection with Figure 27B, which is a base sheet used on "human ear," not "scalp." *See* Paragraph 82 of Kramer. As shown in Applicant's Figures 1-4, none of the acupoints claimed in the present invention is close to or in the vicinity of the ears. In fact, Applicant's claimed "cap" does not need to cover the ears to have the insomnia, stress, or anxiety relieved effects.

More importantly, as set forth above, the amended claims 13, 16, and 19 are limited to a cap as the acupressure device and neither Kramer nor Yoo teaches or suggests a cap as the acupressure device. Therefore, claims 13, 16, and 19 are not obvious over kramer in view of Yoo. Claims 3-5 are patentable because they depend from claim 13. Claims 6, 14 and 17 have been canceled. Rejection to these claims is now moot.

Claims 7-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer in view of Yoo and further in view of Ioan.

Claims 7-9 have been cancelled, this issue is now moot.

Claims 1, and 3-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ioan in view of Kramer.

The Examiner alleges that “Ioan discloses a cap with hard nubs for applying pressure to points on the scalp. However, the nubs are not metallic.” *See* Office Action of March 9, 2007 at 6.

The Examiner further alleges that “Kramer discloses metallic acupressure applying nubs. Thus, it would have been obvious to have used metal for the nubs of Ioan, as the only requirement for the nubs is that it be a hard material.” *Id.*

Finally, the Examiner avers that “the applicant has detailed that the Baihui is well known and as a pressure point on the scalp, it would have been obvious to apply pressure thereto for treating different maladies. The application of pressure on this point will inherently treat insomnia.” *Id.*

In response to the rejections, Applicant has further limited the acupressure device in independent claims 13, 16, and 19 to an insomnia reliever, a stress/tension reliever, or an anxiety/depression reliever.

In fact, as discussed above, Kramer teaches small pieces of base sheet to be placed on either palms or ears. The base sheet is clearly not a cap. Also, the only acupressure device taught by Kramer to have insomnia treatment effect is a base sheet to be placed on the human ear. *See* paragraph 82. Kramer never teaches or suggest an acupressure device to be a stress/tension reliever or an anxiety/depression reliever.

As shown in Figures 1-4 of the present invention, Applicant teaches the acupressure device contains metal members that are concentrated in the center of the head, clearly not in vicinity of the human ears. Thus, Kramer is either irrelevant or in fact “teaching away” from Applicant’s invention, and cannot in any way be relied upon as “inherent” disclosure of

Applicant's invention.

The cap-like device taught in Ioan is a natural headache reliever. As set forth below, the indication of headache is distinctively different from insomnia, stress, or anxiety.

Insomnia is a sleep disorder characterized by an inability to sleep and/or inability to remain asleep for a reasonable period. Insomniacs typically complain of being unable to close their eyes or "rest their mind" for more than a few minutes at a time. Both organic and nonorganic insomnia constitute a sleep disorder. It can be caused by fear, stress, anxiety, medications, herbs, caffeine, depression, or bipolar disorder and sometimes occurs for no apparent reason. An overactive mind or physical pain may also be causes. *See* <http://en.wikipedia.org/wiki/Insomnia>.

In medical terms, stress is the disruption of homeostasis through physical or psychological stimuli. Stressful stimuli can be mental, physiological, anatomical or physical reactions. *See* [http://en.wikipedia.org/wiki/Stress_\(medicine\)](http://en.wikipedia.org/wiki/Stress_(medicine)).

Anxiety is an unpleasant state that involves a complex combination of emotions that include fear, apprehension, and worry. *See* <http://en.wikipedia.org/wiki/Anxiety>.

A headache (cephalalgia in medical terminology) is a condition of pain in the head; sometimes neck or upper back pain may also be interpreted as a headache. It ranks amongst the most common local pain complaints. *See* <http://en.wikipedia.org/wiki/Headache>.

Applicant further wants to remind the Examiner that a new use of even a known process, machine, manufacture, or composition of matter, or an improvement thereof is patentable under 35 U.S.C. § 101, where the inherency argument does not apply. Therefore, even if the Examiner's argument on "inherency" has merits, which Applicant does not agree, claims 15, 18 and 20, which are "method of use" claims, should still be patentable over Ioan in view of Kramer.

Finally, regarding the Examiner's argument that "Baihui point is well known and as a pressure point on the scalp, it would have been obvious to apply pressure thereto for treating different maladies," Applicant would like to remind the Examiner that "long felt need", a major element in secondary consideration, can be used here to obviate the obvious rejections. Indeed, Baihui point has been known to the public for over a thousand years. However, until today, insomnia, stress, or anxiety still is a major illness among the humans, and there has been no cap sold in the marketplace which can relieve the insomnia, stress or anxiety symptoms except Applicant's claimed invention. This demonstrates that Applicant's claimed invention is not obvious over prior art of records.

Claims 25-30 were added in the Response filed July 9, 2007 and have been amended to depend from either claim 16 or claim 19. As discussed above, claims 16 and 19 are patentable over the cited prior art references. Therefore, claims 25-30 are patentable over cited prior art references.

In view of the foregoing, Applicant respectfully request that the application be in condition for allowance. Should there be any questions regarding this application, the examiner is requested to contact the applicant's attorney to resolve the problem.

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